

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

United States of America,

Case No.: 2:14-cr-00177-JAD-GWF

Plaintiff

v.

**Order Denying Motion for Sentence  
Reduction Based on Amendment 801**

Gregory Akel,

[ECF No. 122]

Defendant

Federal prison inmate Gregory Akel is serving a 99-month sentence after pleading guilty to receipt of child pornography. Akel's low-end guidelines sentence, which was based on the 2015 version of the United States Sentencing Commission's Guidelines Manual by stipulation, included a two-level enhancement under § 2G2.2(b)(3)(F) because the offense involved distribution. But Amendment 801, which became effective on November 1, 2016, revised that guideline provision to require *knowing* distribution.<sup>1</sup> Akel moves for a sentence reduction under Amendment 801 because he did not admit in his plea agreement that his distribution was knowing.<sup>2</sup> That amendment is not retroactive, however, and it affords Akel no relief. So I deny his motion.

**Background**

In March 2015, Akel signed a plea agreement in which he pled guilty to one count of receipt of child pornography.<sup>3</sup> In the agreement, the parties agreed to jointly recommend a two-level enhancement under U.S.S.G. § 2G2.2(b)(3)(F) for distributing material<sup>4</sup> and a low-end

<sup>1</sup> See U.S.S.G. Man., Supp. to Appx. C at 132 (Amendment 801).

<sup>2</sup> ECF No. 122.

<sup>3</sup> ECF No. 49.

<sup>4</sup> *Id.* at 8.

1 guidelines-range sentence of 97–121 months.<sup>5</sup> Akel also waived all collateral challenges,  
2 including claims under 28 U.S.C. § 2255.<sup>6</sup> At Akel’s March 2015 sentencing hearing, the  
3 government failed to recommend a low-end sentence,<sup>7</sup> and the sentencing judge sentenced Akel  
4 to a mid-range sentence of 112 months.<sup>8</sup>

5 Akel appealed, contending that the government breached the plea agreement by failing to  
6 recommend a low-end sentence, and he requested the appellate court to vacate his sentence and  
7 remand it to a different judge for resentencing. The government did not oppose Akel’s appeal.  
8 The Ninth Circuit reversed, remanded, and ordered that the case be reassigned for resentencing.  
9 At Akel’s May 2017 resentencing hearing, the parties agreed that the 2015 Sentencing  
10 Guidelines should be applied. Using that version of the Guidelines, I sentenced Akel to 99  
11 months’ imprisonment.<sup>9</sup>

12 Akel appealed, and the Ninth Circuit dismissed his appeal due to his valid appeal  
13 waiver.<sup>10</sup> In March 2019, Akel filed an Amended § 2255 petition, arguing that Amendment 801  
14 to the 2016 Sentencing Guidelines “expressly requires that distribution be knowing for the two-  
15 level enhancement [in U.S.S.G. § 2G2.2(b)(3)(F)] to apply.”<sup>11</sup> He contends that he did not admit  
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17 <sup>5</sup> *Id.* at 11. The parties agreed to jointly recommend a sentence at the low end of the guidelines  
18 range as calculated by the court, and the sentencing judge adopted the range suggested by the  
19 parties.

20 <sup>6</sup> *Id.* at 15-16.

21 <sup>7</sup> The sentencing transcripts reflect that Akel’s counsel argued for a low-end sentence of 97  
22 months, and the government did not affirmatively recommend a sentence.

23 <sup>8</sup> ECF No. 65.

<sup>9</sup> ECF No. 106.

<sup>10</sup> ECF No. 117.

<sup>11</sup> ECF No. 122 at 4. The Amended Petition is identical to a §2255 petition Akel filed in October  
2018. Because Akel filed an identical copy of his §2255 petition, I denied the original as moot.

1 to knowing distribution in his plea agreement, so his sentence should be modified in light of  
 2 Amendment 801. The government moved to dismiss his petition,<sup>12</sup> and I held that Akel's claim  
 3 was not cognizable under § 2255 because his contention that he should be resentenced in light of  
 4 Amendment 801 raises neither constitutional nor jurisdictional error.<sup>13</sup> So I instead construed  
 5 Akel's § 2255 petition as a motion for resentencing under 18 U.S.C. § 3582(c)(2) and ordered  
 6 the government to respond.<sup>14</sup>

### 7 **Discussion**

8 18 U.S.C. §3582(c)(2) allows a district court to reduce a defendant's term of  
 9 imprisonment if he was "sentenced to a term of imprisonment based on a sentencing range that  
 10 has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), . .  
 11 after considering the factors set forth in section 3553(a) to the extent that they are applicable, if  
 12 such a reduction is consistent with applicable policy statements issued by the Sentencing  
 13 Commission." "The 'applicable policy statement' relevant here is § 1B1.10 of the Sentencing  
 14 Guidelines,"<sup>15</sup> which gives the court the discretion to reduce a term of imprisonment "[i]n a case  
 15 in which a defendant is serving a term of imprisonment, and the guideline range applicable to  
 16 that defendant has subsequently been lowered as a result of an amendment to the Guidelines  
 17 Manual listed in" § 1B1.10(d).<sup>16</sup> The Sentencing Guidelines emphasize that "[a] reduction in the  
 18 defendant's term of imprisonment is not consistent with this policy statement and therefore is not  
 19 authorized under 18 U.S.C. § 3582(c)(2) if—(A) none of the amendments listed in subsection (d)

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21 <sup>12</sup> ECF No. 125.

22 <sup>13</sup> ECF No. 127 at 4.

23 <sup>14</sup> The government responded, ECF. No. 128, and Akel replied, ECF No. 131.

<sup>15</sup> *United States v. Ornelas*, 825 F.3d 548, 550 (9th Cir. 2016).

<sup>16</sup> U.S.S.G. § 1B1.10(a)(1).

1 is applicable to the defendant. . . .”<sup>17</sup> Amendment 801 is not listed among those amendments  
2 covered by §1B1.10. Because the Sentencing Commission did not list Amendment 801 as one  
3 permitting a sentence reduction under § 3582(c)(2), this court lacks the authority to reduce  
4 Akel’s sentence based on it.<sup>18</sup>

5 **Conclusion**

6 IT IS THEREFORE ORDERED that Gregory Akel’s Motion for Reduction of Sentence  
7 [ECF No. 122] is **DENIED**.

8 Dated: July 28, 2020

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U.S. District Judge Jennifer A. Dorsey

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23 <sup>17</sup> U.S.S.G. § 1B1.10(a)(2).

<sup>18</sup> *United States v. Cueto*, 9 F. 3d 1438, 1440–41 (9th Cir. 1993).